IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19855 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PATEL PRABHUDAS PARSHOTTAMDAS & 1 - Petitioner(s)

Versus

DEPUTY COLLECTOR & 1 - Respondent(s)

==========

Appearance :
MR DK ACHARYA for Petitioner(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 2,
==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/10/2005

ORAL JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Dy.Collector, Palanpur dtd.21/7/2005 in Bombay Tenancy Sec.65 Case No.2 of 2004 under sec.65 of the Bombay Tenancy Act, taking over the management of the land bearing Survey NO.269/P/3, area ad-measuring 2 Acres and 34 Gunthas of Palanpur (hereinafter referred to as “the land in question” for convenience).

2. The land in question was owned by Faiz Mohammed Narirkhan Sindhi and two others, which came to be purchased by the petitioners by registered sale deed dtd.28/7/2003 and the names of the petitioners came to be mutated in the revenue record.

3. The Dy.Collector, Pananpur initiated proceedings under sec.65 of the Bombay Tenancy Act and the petitioners who are purchasers of the land in question were required to show cause as to why the management of the land in question should not be taken over by the State Government, as the land in question is kept as fallow land and is not cultivated for the period between 1998-99 to 2002-2003.

4. It appears that the petitioners were served with the notices but when lastly the matter was heard, an application was submitted on behalf of the learned advocate appearing on behalf of the petitioners to adjourn the matter, which came to be rejected and the Dy.Collector, Palanpur, considering the statement of the Talati-cum-Mantri passed order under sec.65 of the Bombay Tenancy Act taking over the management of the land in question to the State Government for a period of 10 years by holding that the land

in question is not cultivated for the period between 1998-99 to 2002-2003. Being aggrieved by and dissatisfied with the order passed by the Dy.Collector, Pananpur dtd.21/7/2005 in Bombay Tenancy Sec.65 Case No.2 of 2004, the petitioners have preferred the present petition under Article 226 of the Constitution of India.

5. Mr.D.K. Acharya, learned advocate appearing on behalf of the petitioners has vehemently submitted that the impugned order has been passed on the ground that earlier the land owners did not cultivate the land in question for the period between 1998-99 to 2002-2003 and for that the petitioners should not be made to suffer, as in fact, the petitioners after purchasing the land in question, have cultivated the land in question. He has also further submitted that the impugned order has been passed relying on the statement of the Talati-cum-Mantri but the copy of which is not given to the

petitioners. It is also further submitted that the Dy.Collector has also considered the fact that so far as the petitioners are concerned, after purchasing the land in question, they have cultivated the same. It is also further submitted that if one additional opportunity would have been given and/or adjournment would have been given, the petitioners could have pointed out the said material aspect. He has, therefore, requested to set aside the order and remand the matter to the Dy.Collector.

6. Mr.M.R.Mengde, learned AGP while trying to support the order passed by the Dy.Collector has submitted that the land in question was not cultivated by the original land owners for the period from 1998-99 to 2002-2003, though one additional opportunity was given while passing order in 1998 under sec.65 of the Act and therefore, the Dy.Collector is justified in passing the order under sec.65 of the Act.

7. Heard the learned advocates appearing on behalf of the parties and perused the material on record.

8. In the case on hand, it is required to be noted that the petitioners are the subsequent purchasers of the land in question, who have purchased the land in question in the year 2003 from the original land owners and the breach which is alleged to have been committed, is by the original land owners. It is the contention of the petitioners that after purchasing the land in question, they have cultivated the same but the said aspect has not been considered by the Dy.Collector. It also appears that in fact an application for adjournment was submitted on behalf of the petitioners, but the same was rejected and the Dy.Collector passed the impugned order. It *prima facie* appears that in view of the fact that the matter was adjourned 5 to 6

times, the Dy.Collector was justified in rejecting the application for adjournment. However, in the facts and circumstances more particularly when the petitioners are the subsequent purchasers who have purchased the land in question and the alleged breach is committed by the original land owners during the period prior to the purchase of the land in question by the petitioners. It is also the contention of the petitioners that the after purchasing the land in question, they have purchased the same. In these circumstances, this court is of the opinion that if one additional chance is given to the petitioners to put forward their case while remanding the matter to the Dy.Collector, it will meet the ends of justice.

9. Under the circumstances and for the reasons stated hereinabove, the impugned order passed by the Dy.Collector, Palanpur in Bombay Tenancy Sec.65 Case No.2 of 2004 dtd.21/7/2005 is

hereby quashed and set aside and the matter is remanded to the Dy.Collector, Palanpur for passing an appropriate order afresh in accordance with law and on merits, after giving an opportunity of being heard to the petitioners, within a period of six months from the date of receipt of writ of this order.

10. The petitioners are directed not to take any adjournment unnecessarily.

11. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R. SHAH,J.)

rafik